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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD J. ROQUE,

Defendant and Appellant.

B208208

(Los Angeles County  
Super. Ct. No. LA056768)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Susan M. Speer, Judge. Affirmed.

David D. Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Donald J. Roque appeals from the judgment entered following his plea of no contest to the charge of possession of heroin. Following our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), we affirm.

## FACTS

We glean the following facts from the testimony at the preliminary hearing of defendant and co-defendants Kornish, Yaeger and Flores. At about 7:45 p.m. on September 6, 2007, undercover Los Angeles Police Officer Thomas Eiman approached Kornish at a pay phone near Wicks and Laurel Canyon Blvd., and asked if she knew where Eiman could get some “crystal.” Kornish directed Eiman to a nearby park.

After not finding anyone at the park selling narcotics, Eiman returned to Kornish, whom he saw talking to defendant and Yaeger. Defendant and Yaeger were seated in the driver’s seat and passenger seat, respectively, of a truck parked in front of a methadone clinic. When Kornish noticed Officer Eiman standing nearby, she asked defendant if he had any “crystal.” Eiman did not hear defendant’s response. After Kornish walked away, Eiman approached the truck and asked defendant if he knew where Eiman could get some crystal. In response to defendant’s inquiry, Eiman said he was looking for at least a gram for \$50. Yaeger said they would have to talk to Kornish when she returned. When Kornish came back, Eiman stepped away from the window while Kornish continued her conversation with defendant. A short time later, Kornish called Eiman back to the window and told him that defendant was going to get it for him. Eiman refused to give them any money until he saw the narcotics, so defendant agreed to bring the narcotics back. When defendant and Yaeger drove away, Eiman let his back up team know.

After awhile, Kornish walked to the back of the clinic just before a late model Ford van pulled into the clinic parking lot and drove to the back. A few minutes later, Kornish, now accompanied by Flores, walked toward Eiman. Kornish told Eiman that Flores would get the drugs for him and that defendant had a tendency to rip people off. Flores confirmed that she would get the drugs for Eiman and drove away. Meanwhile,

Eiman heard from his back up officers that they were watching defendant and Yaeger, who were parked in a nearby parking lot.

While Eiman was waiting for Flores to return, Kornish approached him and asked to see his money, to verify that it was not marked; Eiman handed Kornish \$40, which Kornish illuminated with a flashlight. Eventually, Flores returned in the Ford van. Eiman walked with her to the back of the clinic where Flores gave Eiman a bindle containing a substance that looked like crystal methamphetamine in exchange for which Eiman gave her the money. Eiman walked away and gave the signal to his back up officers that the transaction was complete and to make the arrests.

In a post-arrest search, defendant was found to be in possession of a Ziploc baggie containing three aluminum foil wrapped bindles containing a substance resembling heroin and \$3,661 in U.S. currency; in addition, seven balloons containing a similar substance were found in the center console of defendant's truck. After defendant was advised of his rights, he stated that he does not sell "meth"; he only told Eiman that he would get him the "meth" to get Eiman's money. Yaeger stated that she and defendant injected heroin while they were seated in the truck.

## **PROCEDURAL BACKGROUND**

An information filed on October 13, 2007, charged defendant with sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); sale of heroin (Health & Saf. Code, § 11351); and transportation of heroin (Health & Saf. Code, § 11352, subd. (a)). It further alleged multiple prior conviction enhancements pursuant to section 667.5, subdivision (b) and the Three Strikes Law (Pen. Code, § 667, subds. (b)-(i), § 1170, subds. (a)-(d)).<sup>1</sup>

After being advised of and waiving his rights, on March 3, 2008, defendant pled no contest to possession of heroin (Health & Saf. Code, § 11351) and admitted one prior conviction. That day, he was sentenced to five years in prison comprised of the two year

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

low term, doubled pursuant to the Three Strikes Law, plus a consecutive one year pursuant to section 667.5, subdivision (b). Pursuant to the plea agreement, the remaining counts were dismissed. Defendant received presentence custody credit for 180 actual days and 90 days of good conduct credit, for a total of 270 days. Subsequently, defendant wrote to the trial court asking that his sentence be modified. On May 8, 2008, the trial court denied defendant's request.

On May 23, 2008, defendant in pro per filed a notice of appeal from the March 3, 2008 judgment. His request for a certificate of probable cause alleged that there was insufficient evidence to have held him to answer, he received ineffective assistance of counsel, the trial court judge was biased because her husband was an undercover Los Angeles police officer, and the trial court judge did not consider mitigating factors in determining his sentence. The trial court denied the request, observing: "defendant's grounds for appeal are unintelligible and do not state sufficient legal or factual basis for appeal from his negotiated plea."

We appointed counsel to represent defendant on this appeal. After examination of the record, appointed counsel filed an opening brief which did not raise any arguable issues and which requested that we independently review the record pursuant to *Wende*, *supra*, 25 Cal.3d 436.

On October 1, 2008, we advised defendant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. Defendant submitted no contentions.

We have examined the entire record and are satisfied that appointed counsel has fully complied with his responsibilities and that no arguable issues exist. (*Wende*, *supra*, 25 Cal.3d at p. 441.)

## **DISPOSITION**

The judgment is affirmed.

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RUBIN, ACTING P. J.

WE CONCUR:

BIGELOW, J.

O'NEILL, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.